

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 77-01
(April 29, 1977)

**Disqualification Requirements in Cases Involving
Law Firm That Employs Child**

Issue

What is the propriety of a judge, whose child is employed as a paralegal, sitting on cases in which his child's employer may represent one of the parties appearing before the judge?

Answer: Disqualification is not automatically required.

Facts

The requesting judge asked for the committee's opinion on the basis of the following facts: Assume that a judge's child is a paralegal employed by a law firm in an area over which the court in which the judge sits has appellate jurisdiction. Assume further that it is impossible, because of the nature of a paralegal's job, for the judge to ascertain whether or not his child worked on particular litigation which might subsequently appear before the appellate court.

Discussion

Such employment would not lead to an automatic disqualification of the judge; however, the individual circumstances of each case may require an independent determination of whether or not to disqualify.

Canon 3 of the Code of Judicial Conduct states that "A judge should perform the duties of his office Impartially and diligently." Canon 3C which addresses itself to those instances in which a judge should disqualify himself from hearing proceedings before him, provides:

- (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:
 - (d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:
 - (ii) is acting as a lawyer in the proceeding absent the consent of counsel.

It is obvious that a paralegal is not "a lawyer" within the meaning of this canon. This however, does not in and of itself end the problem. The general wording of the introductory paragraph of Canon 3C(1) refers to those proceedings "in which his impartiality might reasonably be questioned." The question therefore, becomes whether or not the child's employment lends an air of reasonable suspicion that the judge may lack the necessary impartiality to try the case.

Advisory Opinion 77-01

With the exception of one minor change in section C(1)(d)(ii),¹ the Arizona Supreme Court adopted in its entirety Canon 3 of the ABA Model Code of Judicial Conduct. The official *Reporter's Notes* and official comments to the ABA Code are therefore persuasive.

In reference to Canon 3C(1) the reporter stated that,

Any conduct that would lead a reasonable man knowing all the circumstances to the conclusion that the judge's "impartiality might reasonably be questioned" is a basis for disqualification.

He also reported that it was the ABA Committee's feeling that,

[A]n impropriety or the appearance of impropriety in violation of Canon 2² that would reasonably lead one to question the judge's impartiality in a given proceeding clearly falls within the scope of the general standard as does participation by the judge in the proceeding if he thereby creates the appearance of a lack of impartiality.

We must look further into the Canons to decide whether the facts before this committee are such as would pose a reasonable question as to the judge's impartiality. The official comment to Canon 3C(1) (d)(ii) of the ABA Code states that,

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "his impartiality might reasonably be questioned" under Canon 3C(1), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d) (ii) may require his disqualification.

The *Reporter's Notes* to Canon 3C(1)(d)(ii) emphasize that,

[T]he fact that a relative of a judge is affiliated with a law firm that is involved in the proceeding does not automatically disqualify the judge. The committee felt that such a broad disqualification is not justified. Of course, either a breach of the general impartiality test or a judge's knowledge that his lawyer-relative's interest in the law firm could be substantially affected is a basis for disqualification.

In view of the foregoing authority we are of the opinion that there is no requirement per se that the judge must disqualify himself on those cases in which his daughter's employer is involved. It is apparent from the comments and reporter's notes that such was not the intention of the committee in drafting Canon 3. It is, however, possible that in certain instances his daughter's work on a case might be so extensive that a question arises as to whether the judge's impartiality is in jeopardy. Such a question could come from counsel in the case or it could be raised in the judge's own mind. In such case the committee would

Advisory Opinion 77-01

advise that the judge opt in favor of fully disclosing the facts of the matter to the attorneys in the case and, based upon their stated views and the aforementioned authorities, decide whether "his impartiality might reasonably be questioned."

The canons also provide in Canon 3D for waiver of disqualification by agreement of the opposing counsel in the case. If the judge should reach the conclusion that the canons require his disqualification he would still be able to hear the case if all the attorneys in the matter signed a statement waiving his disqualification.

Endnotes

¹Subsection (ii) of section C (1) (d) of ABA Canon 3 reads, "(ii) is acting as a lawyer in the proceedings." The Arizona Supreme Court in adopting 3C(1)(d)(ii) amended it to read, "(ii) is acting as a lawyer in the proceeding *absent the consent of counsel*." (Emphasis added.)

²Canon 2 of the ABA Codes of Judicial Conduct reads:

A judge should avoid impropriety and the appearance of impropriety in all his activities.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 3, 3C(1)(d)(ii) and 3D (1975) and related canons in the *Model Code of Judicial Conduct*, American Bar Association (1972).